

**IN THE
COURT OF APPEALS OF MARYLAND**

SEPTEMBER TERM, 2009

NO. 151

JUSTIN RAY HANNAH,

Petitioner

v.

STATE OF MARYLAND,

Respondent

**ON WRIT OF CERTIORARI TO THE
COURT OF SPECIAL APPEALS OF MARYLAND**

PETITIONER'S BRIEF

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PETITIONER'S BRIEF

STATEMENT OF THE CASE

Petitioner Justin Ray Hannah was charged with attempted murder and first-degree assault as to Brent Nicholson and Cortney Bledsoe. On November 5-14, 2007, Petitioner was tried by the Circuit Court for Harford County, the Honorable Stephen M. Waldron presiding with a jury. The jury found Petitioner guilty of attempted first-degree murder of Nicholson, and deadlocked with respect to the

charges relating to Bledsoe; a mistrial was declared with respect to the latter charges and the State subsequently entered a *nol pros*.

On February 22, 2008, the court imposed sentence of incarceration for life, with all but 40 years suspended, to be followed by five years of supervised probation.

The Court of Special Appeals affirmed, with one Judge dissenting on the issue that is now Argument II before this Court. *Hannah v. State*, No. 2920, September Term, 2007. By Order dated December 18, 2009, this Court issued a writ of certiorari.

QUESTIONS PRESENTED

1. In a prosecution for attempted murder, did the admission of defense evidence that Petitioner did not own or have access to a gun justify the admission into evidence of "rap" lyrics and associated drawings produced by Petitioner two years before the offense which dealt with guns and violence?
2. Did the trial court err in excluding evidence that a key State's witness had an ulterior motive to implicate Petitioner?

STATEMENT OF FACTS

Cortney Bledsoe testified that she was involved in a dating relationship with Petitioner from November of 2006 through April of 2007, but as of April 14, 2007, had broken off the relationship. (T.11/7/07, 69). On that evening, she was at the residence of Brent Nicholson, whom she was currently dating, Brent's sister Jessica, and their parents. During the evening, Mr. Hannah telephoned her numerous times, urging her to "leave there and go hang out with him." (T.11/7/07, 72). Verizon telephone records were introduced, which reflected that

Mr. Hannah called Bledsoe approximately 50 times that evening, while she called him about 15 times.

Bledsoe's testimony continued that Petitioner told her that he wanted to arrange a meeting with Brent Nicholson, and that ultimately it was agreed that Nicholson would meet with Petitioner at a church parking lot on Cedar Church Road. Nicholson drove there during the early-morning hours of April 15 in his father's truck, and Bledsoe insisted upon accompanying him. (T.11/7/07, 73).

Unarmed, Nicholson and Bledsoe pulled into the church lot. (T.11/7/07, 76). According to Bledsoe, Mr. Hannah called her cell phone again, seeking to confirm that it was in fact Nicholson in the truck.

At that point a beige Ford Escort drove by; according to Bledsoe, she recognized Mr. Hannah as the driver, the clothing as that she had seen him previously wear, and the vehicle as his. (T.11/7/07, 77). The passenger window was rolled down, three shots were fired, and the Escort drove off. (T.11/7/07, 79). This incident occurred at about 3:00 a.m. (T.11/7/07, 80). Neither Bledsoe nor Nicholson was injured.

Bledsoe and Nicholson returned to the latter's residence, and after a few minutes called the police. After the arrival of officers, Petitioner called again, and the call was placed on speaker-phone. (T.11/7/07, 81-2). The witness did not recall what was said, but others present recalled words to the effect of "Your boy's done, is this finished, that is why we popped shots." (E.g., 11/8/07, 54 – testimony of Jessica Nicholson).

Bledsoe believed there was a second person in the car who might have been the shooter, but claimed to be certain Petitioner was the driver. (T.11/7/07, 91). On cross-examination, the witness acknowledged writing to him in prison, acknowledging *inter alia* that the situation was her fault. (T.11/7/07, 97). She also conceded that her mother was opposed to her dating Mr. Hannah, but denied inventing the story in response to pressure from her mother. She further admitted telling the police she was not certain who it was, but in court testified that she was referring to the shooter, not the driver. (T.11/7/07, 107).

Deputy First Class Steven Poort testified that upon responding to the residence at 3067 Whiteford Road that the accused shared with his mother and step-father at 3:40 a.m., the hood of the beige Escort was warm as if the vehicle had been recently driven. (T.11/7/07, 128-130).

Brent Nicholson testified that during the evening of April 14 he was at home, at 4311 Conowingo Road, with his sister Jessica, Bledsoe, and Matt Wessell. (T.11/8/07, 6). During the evening Mr. Hannah repeatedly called Bledsoe, and eventually spoke to Nicholson, asking that he meet him on Cedar Church Road. (T.11/8/07, 7-8). Expecting at most a fistfight, Nicholson agreed. Earlier that evening, he had noted Petitioner driving by his house.

Nicholson drove to the church parking lot with Bledsoe in his father's truck. The vehicle was free of bullet holes at that point; Detective Michael Pachkoski would later process the vehicle and locate one bullet hole in the driver's side, two in the bumper, and corresponding portions of projectiles in the body of

the vehicle. (T.11/8/07, 125-129, State's Exhibits 66, 67, and 68). Nicholson's testimony continued that at this point Petitioner "called her phone and asked if it was us and then drove by and shot the car three times." (T.11/8/07, 13). Petitioner, whom he knew from school, was in the driver's seat and driving his own car, while a second person whom he was unable to identify was also present. (T.11/8/07, 14-15).

After the shooting Nicholson returned home. After the police arrived the phone rang again, and the caller stated "Your boy is done, that's why me and my boys popped the shots." (T.11/8/07, 20).

On cross-examination, Nicholson testified that while he was dating Cortney Bledsoe, she remained in love with Mr. Hannah, although she did not want to be with him at that point. (T.11/8/07, 33).

Nicholson further testified that Matt Germouth (who was charged in this case and invoked the Fifth Amendment privilege at Petitioner's trial, and whose charges were not pressed), left numerous messages at his house, trying to set up a fight with Nicholson. (T.11/8/07, 39-40). Petitioner was to testify subsequently that Germouth was at the Hannah residence that evening. Nicholson admitted that his troubles with Germouth also centered on his relationship with Bledsoe. (T.11/8/07, 43).

No physical evidence tended to establish that a shooting occurred at the church parking lot. The State contended that a heavy rain that evening might have accounted for the absence of cartridge casings, tire tracks, or the like.

Matthew Wessel, who was dating Jessica Nicholson, testified that Brent and Cortney briefly left during the evening, and upon their return were “frantic” and stated that they had been shot at. (T.11/8/07, 61).

A substantial defense case was presented. Petitioner’s mother Kathy Carroll described her 18-year-old son as a laid-back peacemaker who never had a gun, worked and attended high school, and was in a good relationship with Cortney Bledsoe. (T.11/9/07, 13-16). On April 15, 2007, he arrived home at 12:07 a.m., which stuck out in her mind because she and her son had previously argued over the latter’s violation of his midnight weekend curfew. (T.11/9/07, 19). From this moment – at least two hours before the shooting – he did not leave the house. (T.11/9/07, 22).

While a police officer would later testify that Carroll told him that Justin had arrived home at 11:45 p.m. (T.11/9/07, 141), and might not have been able to hear him leave after that time, his mother testified that in fact she told the officer he arrived between 11:45 and 12:07, and that 12:07 was the accurate time. She further admitted that two weeks before the incident she and her son had argued and he had pushed her, but that he had apologized and accepted his punishment, and the matter was swiftly resolved.

Mr. Hannah’s friend Thomas Hunt testified that he encountered Cortney Bledsoe at the Jarrettsville Carnival on June 1, 2007. (T.11/9/07, 49). Bledsoe stated that she felt bad for Petitioner, and that at the angle from which she viewed the shooting she did not actually see anything. (T.11/9/07, 50). Bledsoe

continued that her parents did not like him because he is African-American, that they wanted her to continue with the accusation, and that she felt compelled to do what they told her. (T.11/9/07, 50-51).

Petitioner's grandmother Violet Hannah testified that on May 1, 2007, Bledsoe told her that her grandson did not commit the crime, and that she had been pressured to say he did because her mother did not like him. (T.11/9/07, 64). The witness asked Bledsoe to report this, but Bledsoe refused because her mother had ordered her to obey or go back into rehab. (T.11/9/07, 65).

Lauren Dobbs, Thomas Hunt's girlfriend, testified that she was working and going to school, and was friendly with both Mr. Hannah and Cortney Bledsoe. (T.11/9/07, 69-71). While at the Carnival with Hunt, she encountered Bledsoe, who stated that she "did not honestly know who shot at her," and was unable to see the shooter. (T.11/9/07, 74). The witness admitted that she also spoke to Bledsoe shortly before the trial, but only to exhort her to tell the truth.

Petitioner testified in his own defense. Eighteen years old, he began a dating relationship with Bledsoe in November of 2006, which lasted for six months. (T.11/9/07, 89-91, E.49-51). He knew Brent Nicholson from school, but had no relationship or problems with him. (T.11/9/07, 96, E.56). He has never possessed, held, or had access to any firearm.

On the evening of April 14, he visited friends, beginning his return home between 11:30 and 11:45 in order to comply with his curfew. (T.11/9/07, 100, E.60). He arrived home at 12:07 accompanied by Matt Germouth; he was

cognizant of the time as a result of a recent argument with his mother over missing curfew. (T.11/9/07, 102-03, E.62-63). While he was out Bledsoe had called to check up on him, as she was bothered by suspicions that he was involved with other girls despite the fact that their relationship had terminated.

On the night in question, Petitioner had no idea that Bledsoe was with Brent Nicholson. (T.11/9/07, 106, E.66). Nothing unusual occurred; he spent the balance of the evening watching television and playing video games with Germouth. Mr. Hannah did not call anyone to arrange a meeting at the church, and did not make the "Your boy is done" call. (T.11/9/07, 108-09, E.68-69). While he did exchange calls with Bledsoe, it was for the purpose of assuring her that he was not with another girl.

While Mr. Hannah had essentially no relationship with Nicholson, Matt Germouth was in fact on bad terms with him. (T.11/9/07, 113, E.73).

As will be discussed in Argument, *infra*, Petitioner admitted over objection that he authored certain rap lyrics and drawing relating to guns and shootings. (T.11/9/07, 130-35, E.91-96; *see* State's Exhibit 69, E.21-40).

For the State in rebuttal, Detective Peter Georgiades testified that Kathy Carroll told him that Mr. Hannah arrived home at 11:45 p.m., and that she might not have been able to hear if he had left again later. (T.11/9/07, 141).

Cortney Bledsoe returned to the stand as a rebuttal witness, and denied telling Violet Hannah that her grandson did not commit the crime or that she was under family pressure to maintain the charges. (T.11/9/07, 147). Her mother did

not threaten to send her back to “rehab,” and in fact she has never been in rehab.
(T.11/9/07, 148).

ARGUMENT

I. IN A PROSECUTION FOR ATTEMPTED MURDER, ADMISSION OF DEFENSE EVIDENCE THAT PETITIONER DID NOT OWN OR HAVE ACCESS TO A GUN DID NOT JUSTIFY THE ADMISSION INTO EVIDENCE OF “RAP” LYRICS AND ASSOCIATED DRAWINGS PRODUCED BY PETITIONER TWO YEARS BEFORE THE OFFENSE WHICH DEALT WITH GUNS AND VIOLENCE.

The State adduced no evidence that a teenager’s authorship of lyrics dealing with guns and violence bears any correlation with the author’s likelihood to actually engage in gun violence, particularly where the author is a teenager and the lyrics were written two years prior to the events on trial. It is Petitioner’s position that State’s Exhibit 69, which appears to be Mr. Hannah’s Spanish I notebook containing class notes interspersed with lyrics, drawings, and musings (*see* Joint Record Extract), and the prosecutor’s related questioning, was inadmissible because it was entirely lacking in probative value, and therefore irrelevant. Alternatively, if any part of this material is viewed as carrying probative value, such probative force is substantially outweighed by the potential for unfair prejudice carried by this disturbing material. And finally, not all of the lyrics and drawings deal with guns and violence. Some deal with other prejudicial subjects, such as controlled dangerous substances, which played no role in this trial whatever. Wholesale admission of this material was unquestionably error.

The basic governing principles emerge from this Court's Rules and caselaw. Maryland Rule 5-401 defines "relevant evidence" as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." *See Snyder v. State*, 361 Md. 580, 591, 762 A.2d 125 (2000). Rule 5-402 prohibits the admission of irrelevant evidence, while providing that relevant evidence is presumptively admissible. As will be set forth in greater detail below, these rules render rap lyrics and associated evidence inadmissible in the absence of any foundation establishing a correlation between authorship of such lyrics and engaging in actual violent behavior, particularly where as here there is a substantial lapse in time between authorship and alleged activity. Therefore, the evidence failed to make the existence of any material fact more probable or less probable, and failed the basic test for relevance and threshold admissibility. And even if the defense case somehow "opened the door," the opening the door doctrine simply expands the range of that which is relevant – it does not sanction the admission of evidence which is *not* relevant. *Clark v. State*, 332 Md. 77, 629 A.2d 1239 (1993).

Even if State's Exhibit 69 and the associated cross-examination somehow bore probative value in the absence of any showing that those who write lyrics about gun violence actually engage in such activity, Rule 5-403 calls for the exclusion of even relevant evidence where the probative value of that evidence is "substantially outweighed by the danger of unfair prejudice." *See Terry v. State*,

332 Md. 329, 631 A.2d 424 (1993); *Banks v. State*, 84 Md. App. 582, 581 A.2d 439 (1990), finding error in the admission of evidence the probative value of which was outweighed by unfair prejudice. Here, the time-lapse between writing and alleged action, and the complete absence of foundational proof linking authorship of rap lyrics to engaging in criminal behavior, at the very least render the probative value of the evidence minimal. On the other hand, the quite disturbing lyrics and associated drawings could easily be viewed by lay jurors as evidence of bad character. For that reason as well, the evidence was admitted in error.

At issue here are a series of lyrics which were found in a composition notebook owned by Petitioner two years prior to the shooting. (T.11/9/07, 131). These lyrics, read aloud to the jury during questioning, feature generic references to firearms and violence. *Id.* at 134-35. The lyrics include, *inter alia*, “One, two, three, shot ya ass just one drop” and “ya see da tinted cum down n out come da glock.”¹ *Id.* at 134, and *see* State’s Ex. 69, reproduced in the Record Extract. While Maryland courts have not had the opportunity to examine the appropriateness of using rap lyrics as character evidence, a number of other jurisdictions have explored their impact and appropriate use.

In *South Carolina v. Cheeseboro*, 346 S.C. 526, 552 S.E.2d 300 (S.C. 2001), the Supreme Court of South Carolina determined that the lyrics were too vague when balanced against the prejudicial impact to be admissible. These

¹ Glock is a manufacturer of handguns.

lyrics, similar to the lyrics in question here, bore no specific relation to the crime the defendant was accused of and therefore met none of the special relevancy requirements of a “bad acts” admission. *Id.* at 313. In the present case Mr. Hannah had not even begun dating Bledsoe when the lyrics were written, much less broken up with her or entered into a “love triangle” allegedly motivating him to shoot at Nicholson.

The Court of Appeals of Indiana in a similar context pointed out that evidence of bad acts is generally prohibited. *Bryant v. State*, 802 N.E.2d 486, 499 (Ind. 2004). Here, however, the court allowed the evidence after determining that the lyrics contained references to hiding the body of a woman in the defendant’s trunk, which is where the decedent was discovered in the case, indicating specific knowledge and a plan. *Id.* at 499. In the present case, there is neither a textual nor a temporal relationship between the lyrics and drawings on the one hand, and the shooting on the other.

The California Court of Appeal, Third District, pointed out that “lyrics and poems do not often establish their author’s true state of mind.” *California v. Zepeda*, 167 Cal.App.4th 25, 35, 83 Cal.Rptr.3d 793, 801 (2008) (citing *In re George T.*, 33 Cal.4th 620, 636-39, 16 Cal.Rptr.3d 61 (2004)). While that court did ultimately determine that the lyrics were admissible, the reasoning behind the decision related to motive as the lyrics unequivocally established the defendant as a member of a gang in conflict with the decedent, giving credence to the State’s assertion that it was a gang related crime. *Id.*

In *Brooks v. State*, 903 So.2d 691, 699 (Miss. 2005), the court held that admission of rap lyrics extolling murder, and other gang-related evidence, are subject to the Mississippi equivalents of Md. Rules 5-403 (weighing of prejudice against probative value), and 5-404(b) (admission of “other-crimes” evidence). The Court found error in the trial court’s failure to conduct an on-the-record consideration of the relevant criteria. In the present case, there was certainly no on-the-record balancing performed by the trial court. See *Streater v. State*, 352 Md. 800, 810-11, 724 A.2d 111 (1999). In any event, it is a clear lesson of the *Brooks* opinion that evidence of this sort carries substantial potential for unfair prejudice which must be carefully weighed prior to the admission of such evidence.

Finally with respect to the out-of-state caselaw, it is noteworthy that rap lyrics may be *partially* relevant. In *Boyd v. City of San Francisco*, 576 F.3d 938 (9th Cir. 2009), an action for wrongful death based upon excessive force allegedly employed by the police, the plaintiff’s decedent wrote rap lyrics evidencing animosity to the police, which was highly relevant, as well as referencing other topics such as prostitution, which had no relevance. The Ninth Circuit found that it was error, albeit harmless, to introduce the latter. Similarly in the present case, the lyrics relating to topics other than guns (such as drug use, E.32), do not even possess arguable probative value. For this reason as well, the blanket admission of the evidence was error.

Scientific Studies: Does Writing Rap Lyrics Correlate With Violent Action?

As proponent of the evidence, it was the State's obligation to establish admissibility. *Jackson v. State*, 340 Md. 705, 726, 668 A.2d 8 (1995) (Bell, C.J., dissenting). In the present context, carrying that burden necessarily requires the establishment of some relationship between writing lyrics about an activity on the one hand, and actually engaging in that activity on the other. The relevant scientific literature, however, establishes several reasons for writing lyrics of the sort involved in this case which are entirely removed from actually engaging in the conduct.

Rap artists include violent and controversial themes in their music for a range of reasons completely unrelated to the individual behaviors and proclivities of those artists. In fact, "very little empirical research has actually tested the claim that rap music and violence are causally related."² Those few studies suggesting such a link "suffer from methodological limitations." *Id.* No truly empirical studies have concluded that rap music engenders violent behavior. "The small literature that does examine these issues has yet to conclude that listening to rap music promotes violent and misogynistic beliefs." *Id.* at 9.

Sociology and ethnomusicology studies have identified a number of forces that lead rappers to incorporate violence into their lyrics, none of which are

² *Rap Music's Violent and Misogynistic Effects: Fact or Fiction?*, Charis E. Kubrin and Ronald Weitzer, George Washington University Department of Sociology, 2010 at 4.

reflective of an artist's personally violent nature. Scholars assert that violent themes in rap music, as well as the genre as a whole, may only be analyzed validly within the context of the cultural forces that produced the music form. "Fundamental to the proper interpretation of rap music [] is viewing it within the context of urban street culture."³ Rappers frequently seek to craft a commercially viable image by portraying violence and aggression in their music, and those artists assert that such content is critical to their success in the marketplace. Rappers use violent imagery to create and enhance their personal identities in order to garner respect within their own social groups. Rappers also describe violence as a means of describing the realities of life in their community that might not be examined in mainstream culture otherwise. Finally, some rap music portrays violence in order to decry the negative effects of such behavior on the rappers' communities and friends.

Rap music has ascended to nationwide popularity and commercial success because of, rather than despite, its frequently controversial themes. "Ben Pappas, a columnist for *Forbes* magazine, observes that 'sales of the *controversial but lucrative* lyrics-driven music shot up 134% in the last decade.'" *Id.* at 5 (citing Pappas, Ben. 1998. "The Rap Pack." *Forbes*, September 21, p. 224.) (emphasis added). Violent imagery actually can drive the commercial success of rap music, and is encouraged by the music industry. "Violence and gangsterism in today's

³ *Rap Music and Street Consciousness*, Cheryl L. Keyes, University of Illinois Press, 2002 at 5.

rap has been exaggerated as a marketing ploy by the record companies.”⁴ The presence of violence in rap music can be attributed directly to the demands of the music industry, and therefore cannot be analyzed in a vacuum. “Rap music cannot be fully severed from the ties of the record industry, a fact that has implications for analyzing lyrics.” *Id.* Preeminent rap artists have acknowledged that violence and aggression in their music have contributed directly to their success as artists. The group Run-D.M.C., a member of the Rock and Roll Hall of Fame, states plainly that its success was due in part to its image. “The veteran DJ Jam Master Jay for the duo Run-D.M.C. attributes the group’s success to this type of street attitude. He explains: ‘That’s part of what makes us so good. We’re aggressive.’”⁵ Rappers are aware of the importance of violent imagery to their chances of a lucrative contract. “Artists in search of securing record deals report that they are often told that their message is not hard enough, that they are too clean-cut, that ‘hardcore’ is what is selling... Clearly a directly proportional relationship is developing between gangsta rap’s explicitness and the sale of records.” Kubrin 2006 at 455. The creation of such a violent image can be essential to the success of an aspiring rapper.

The desire of rappers to create a violent image for themselves is driven also by concerns more immediate than the purely commercial. Often, rappers craft

⁴ Kubrin, Charis E. 2006. “‘I See Death Around the Corner’: Nihilism in Rap Music.” *Sociological Perspectives*, Vol. 48, Issue 44, p. 442.

⁵ Keyes at 124 (citing Hinckley, David. 1986. “You Can ‘Run’ but You Can’t Hide.” *Daily News*, July 16, p. 21).

violent lyrics not because they are violent individuals themselves, but because projecting such a violent image is a form of self-defense in their communities. In fact, research has identified this concern as the most important role for violent lyrics. "The two most prominent functions served by violent imagery in rap lyrics [are]: (1) establishing social identity and reputation, and (2) exerting social control."⁶ Violent lyrics provide rappers a chance to establish an identity that provides them some protection from the violence in their communities without the need to resort to actual violence themselves. "Inner-city communities pose high levels of risk for victimization. Yet an important part of the street code is not to allow others to 'get over on you,' to let them know you are not to be messed with... Rappers' lyrics actively define the border between what is acceptable and unacceptable behavior." *Id.* at 373-74. This image is unrelated entirely to actual violent behavior by the rapper. "Rap music does not cause violence but extends the purview of the street code of violence and respect." *Id.* at 377. Instead, lyrical violence serves rappers as a means of protection and identity creation in lieu of actual violence.

Violent lyrics may serve as a mere reflection of the world the rapper inhabits. Rappers depict violence frequently in order to document it, rather than to glorify it. "According to rappers, the one thing more prevalent in the ghetto than poverty, family disruption, and limited opportunities is violence and death...

⁶ Kubrin, Charis E. 2005. "Gangstas, Thugs, and Hustlas: Identity and the Code of the Street in Rap Music." *Social Problems*. Vol. 52, Issue 3, p. 369.

Themes of death and dying, therefore, pervade rap music.” Kubrin 2006 at 447. Some rappers have described their role as quasi-journalists explicitly, calling their music: “‘CNN for black America’ (Chuck D), ‘edutainment’ (KRS-ONE), and ‘a creative outlet which can become like a newspaper that people read with their ears’ (Queen Latifah).” *Id.* at 433. These documentary efforts depict and describe violence in the rappers’ communities, rather than condoning it.

Some rappers move beyond describing their experiences with violence, and employ their music to lament it. “‘Gangsta rap was a critique of ghetto life. So much of it was about turning the cameras on crime and violence and the police,’ says [NYU professor of history and African studies Robin] Kelly.”⁷ These artists portray violent themes in their music in an effort to shed light on problems in their communities, hoping things will improve in the future. “Rap lyrics serve specific social functions in relation to understandings of street life and violence.” Kubrin 2005 at 375.

All of these factors that motivate rappers to incorporate violent imagery into their music have been documented in publications by academic experts. What these studies have not found, however, is a solid link between violent rap lyrics and real violence. “[Violent] narratives may be more mythical than factual.” *Id.* These images are included in music not because the rappers are violent, but because they can find commercial or artistic success portraying themselves as

⁷ Coates, Ta-Neisi. 2003. “Keepin’ It Unreal.” *The Village Voice*, June 03, 2003 (accessed at <http://www.villagevoice.com/content/printVersion/175980> on 1/22/2010.).

such, even if that portrayal has no basis in their own behavior. “These lyrics may stem from a need to share what they perceive as real, or it may be from commercial reasons.” Kubrin 2006 at 454. The research could not be more clear: “Rap music does not cause violence.” Kubrin 2005 at 376-77. To allow evidence suggesting otherwise flies in the face of the leading research in the field.

The link between rap lyrics and violence has not been established. One aspect of this connection, however, has been. Violent lyrics introduced into evidence may evoke startling prejudice from jurors. In fact, potential jurors form a worse impression of an individual when presented with violent rap lyrics he wrote than they do if they are instead told he stands accused of murder.⁸ A study presenting subjects with 1) a person’s violent rap lyrics or 2) a person’s pending murder charge or 3) both or 4) neither found that violent rap lyrics engendered a more negative evaluation than did a murder charge. *Id.* “Exposure to the lyrics evoked a negative reaction in participants that was more intense than the reaction to being told that the young man was on trial for murder.” *Id.* This study concludes that: “The unambiguous results of the personality judgments of the rap lyricist are chilling in their implications.” *Id.* Rappers portray violence in their music for a range of factors unrelated to their own violent nature. No empirical research has proven a link between authoring violent lyrics and violence, except for the link such lyrics conjure in the minds of potential jurors.

⁸ Fischhoff, Stuart. 1999. “Gangsta Rap and A Murder In Bakersfield.” *Journal of Applied Social Psychology*. (Accessed at <http://www.calstatela.edu/faculty/sfisco/rap.html> on 12/29/1009).

In sum, caselaw recognizes the prejudicial impact of authorship of rap lyrics apparently extolling violence, as well as the necessity for a careful weighing of prejudice against probative value not reflected in this record. The social science literature recognizes that there are reasons for writing such lyrics which are far removed from engaging in the described activity. Under these circumstances – particularly in light of the remoteness in time between authorship and alleged conduct – the evidence was admitted in error.

II. THE TRIAL COURT ERRED IN EXCLUDING EVIDENCE THAT A KEY STATE’S WITNESS HAD AN ULTERIOR MOTIVE TO IMPLICATE PETITIONER.

At the close of defense counsel’s direct examination of Mr. Hannah, the following occurred:

Q: Did she [Cortney Bledsoe] ever confide in you that she had been into a drug rehab?

MS. DELP: Objection.

THE COURT: Sustained.

A: Yeah.

THE COURT: Sustained. (T.11/9/07, 117, E.77).

This ruling was error. At the outset, evidence that Bledsoe had spent time in drug rehabilitation was highly relevant. *See* Md. Rule 5-401, defining “relevant evidence” as that “having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” A contested issue in this case was whether

Bledsoe's mother had pressured her to cooperate in the prosecution of Petitioner because the mother did not like Mr. Hannah or want him to date her daughter. Evidence was adduced that Bledsoe's mother had specifically threatened to return her to "rehab" if she failed to cooperate, while contrary proof was offered that she had never in fact been in such a program. Therefore, her (Cortney's) admission to Mr. Hannah that she had indeed suffered such a commitment tended to make it more likely that the defense version was true.

Nor was the evidence properly excludable as hearsay. Hearsay is defined as an extrajudicial statement offered for the truth of the matter asserted. Rule 5-801(c). Here, the statement was offered for impeachment purposes, to establish an inconsistency with Bledsoe's testimony, *see* Rules 5-613 and 5-616, and to demonstrate a motive to testify falsely. *See, e.g., Ebb v. State*, 341 Md. 578, 671 A.2d 974 (1996).

Even if the statement is viewed as having been offered for its truth, a statement admitting to drug involvement bears the indicia of reliability of a declaration against interest. *See Malholtra v. State*, 717 So.2d 425, 427 (Ala. App. 1998). While statements against interest under Maryland law only provide an independent hearsay exception where the declarant is unavailable, Rule 5-804(b)(3), and that was not the case here, the existence of this "equivalent circumstantial guarantee[] of trustworthiness," Md. Rule 5-803(b)(24), justifies admission under the subsection (b)(24) "catchall" exception. It is highly unlikely that one would falsely admit to having entered drug rehabilitation.

In essence, the evidence was offered to establish that Bledsoe possessed an ulterior motive to implicate Petitioner: to remain in the good graces of her family so as to avoid the risk of being returned to “rehab.” Such evidence is admissible. *See Marshall v. State*, 893 N.E.2d 1170, 1179 (Ind. App. 2008) (“As Marshall observes, a party may introduce evidence of motive to fabricate, and ‘[a] witness’s bias, prejudice, or ulterior motives are always relevant in that they may discredit her or affect the weight of her testimony.’”); *State v. Worthen*, 177 P.3d 664, 670 (Utah App. 2008) (In the context of a defendant’s entitlement to obtain sensitive information, “...there is a distinction between general impeachment evidence used to establish a lack of truthfulness and impeachment evidence ‘directed toward revealing possible biases, prejudices, or ulterior motives of the witness as they may relate directly to issues or personalities in the case at hand;’” it is the latter, more specific category which is of greater benefit to the defense.) While error in the exclusion of evidence of a witness’s ulterior motive most often arises in the context of restriction of the cross-examination of that witness, *see Smallwood v. State*, 320 Md. 300, 577 A.2d 356 (1990), in principle there is no distinction between eliciting such evidence from that witness or extrinsically. *See* Md. Rule 5-616(b)(3) (“Extrinsic evidence of bias, prejudice, interest, or other motive to testify falsely may be admitted whether or not the witness has been examined about the impeaching fact and has failed to admit it.”); *Pettie v. State*, 316 Md. 509, 560 A.2d 577 (1989) (Unlike impeachment through prior inconsistent statement, impeachment through bias or improper motive to testify regarding the

specific matter on trial does not require the laying of a foundation through cross-examination of the witness to be impeached.)

That Courtney Bledsoe admitted that she had been in “rehab” was a vital component of the defense effort to establish an ulterior motive of maintaining the accusation against Petitioner so as to ward off parental pressure taking the form of a threatened return to rehab. Under the Rules and caselaw cited herein, establishing that fact through Mr. Hannah’s testimony was completely proper. Under these circumstances, sustaining the State’s objections was prejudicial error.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court reverse the judgment of the Court of Special Appeals.

Respectfully submitted,

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* Counsel acknowledges the valuable assistance rendered by Pierce Murphy and Alidia T.v.S. Clagett, law clerks, Office of the Public Defender, in the preparation of this brief.

PERTINENT AUTHORITY

Maryland Rules

Rule 5-402. Relevant evidence generally admissible; irrelevant evidence inadmissible.

Except as otherwise provided by constitutions, statutes, or these rules, or by decisional law not inconsistent with these rules, all relevant evidence is admissible. Evidence that is not relevant is not admissible.

Rule 5-403. Exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time.

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Rule 5-404. Character evidence not admissible to prove conduct; exceptions; other crimes.

(a) *Character evidence generally.-*

(1) In general.- Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:

(A) Character of accused.- Evidence of a pertinent trait of character of an accused offered by the accused, or by the prosecution to rebut the same;

(B) Character of victim.- Evidence of a pertinent trait of character of the victim of the crime offered by an accused or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor;

(C) Character of witness.- Evidence of the character of a witness with regard to credibility, as provided in Rules 5-607, 5-608, and 5-609.

(2) Definitions.- For purposes of subsections (a) (1) (A) and (B) of this Rule, "accused" means a defendant in a criminal case and a child alleged to be delinquent in an action in juvenile court, and for purposes of subsection (a) (1) (B), "crime" includes a delinquent act as defined by Code, Courts Article, § 3-801.

(b) *Other crimes, wrongs, or acts.-* Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in

conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake or accident.

Rule 5-613. Prior statements of witnesses.

(a) *Examining witness concerning prior statement.*- A party examining a witness about a prior written or oral statement made by the witness need not show it to the witness or disclose its contents at that time, provided that before the end of the examination (1) the statement, if written, is disclosed to the witness and the parties, or if the statement is oral, the contents of the statement and the circumstances under which it was made, including the persons to whom it was made, are disclosed to the witness and (2) the witness is given an opportunity to explain or deny it.

(b) *Extrinsic evidence of prior inconsistent statement of witness.*- Unless the interests of justice otherwise require, extrinsic evidence of a prior inconsistent statement by a witness is not admissible under this Rule (1) until the requirements of section (a) have been met and the witness has failed to admit having made the statement and (2) unless the statement concerns a non-collateral matter.

Rule 5-616. Impeachment and rehabilitation - Generally.

(a) *Impeachment by inquiry of the witness.*- The credibility of a witness may be attacked through questions asked of the witness, including questions that are directed at:

(1) Proving under Rule 5-613 that the witness has made statements that are inconsistent with the witness's present testimony;

(2) Proving that the facts are not as testified to by the witness;

(3) Proving that an opinion expressed by the witness is not held by the witness or is otherwise not worthy of belief;

(4) Proving that the witness is biased, prejudiced, interested in the outcome of the proceeding, or has a motive to testify falsely;

(5) Proving lack of personal knowledge or weaknesses in the capacity of the witness to perceive, remember, or communicate; or

(6) Proving the character of the witness for untruthfulness by (i) establishing prior bad acts as permitted under Rule 5-608 (b) or (ii) establishing prior convictions as permitted under Rule 5-609.

(b) *Extrinsic impeaching evidence.*-

(1) Extrinsic evidence of prior inconsistent statements may be admitted as provided in Rule 5-613 (b).

(2) Other extrinsic evidence contradicting a witness's testimony ordinarily may be admitted only on non-collateral matters. In the court's discretion, however, extrinsic evidence may be admitted on collateral matters.

(3) Extrinsic evidence of bias, prejudice, interest, or other motive to testify falsely may be admitted whether or not the witness has been examined about the impeaching fact and has failed to admit it.

(4) Extrinsic evidence of a witness's lack of personal knowledge or weaknesses in the capacity of the witness to perceive, remember, or communicate may be admitted if the witness has been examined about the impeaching fact and has failed to admit it, or as otherwise required by the interests of justice.

(5) Extrinsic evidence of the character of a witness for untruthfulness may be admitted as provided in Rule 5-608.

(6) Extrinsic evidence of prior convictions may be admitted as provided by Rule 5-609.

(7) Extrinsic evidence may be admitted to show that prior consistent statements offered under subsection (c) (2) of this Rule were not made.

(c) *Rehabilitation.*- A witness whose credibility has been attacked may be rehabilitated by:

(1) Permitting the witness to deny or explain impeaching facts, except that a witness who has been impeached by prior conviction may not deny guilt of the earlier crime;

(2) Except as provided by statute, evidence of the witness's prior statements that are consistent with the witness's present testimony, when their having been made detracts from the impeachment;

(3) Evidence through other witnesses of the impeached witness's character for truthfulness, as provided in Rule 5-608 (a); or

(4) Other evidence that the court finds relevant for the purpose of rehabilitation.

Rule 5-803. Hearsay exceptions: Unavailability of declarant not required provides, in pertinent part:

(b) *Other exceptions.*-

(24) Other exceptions.- Under exceptional circumstances, the following are not excluded by the hearsay rule: A statement not specifically covered by any of the hearsay exceptions listed in this Rule or in Rule 5-804, but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. A statement may not be admitted under this exception unless the proponent of it makes known to the adverse party, sufficiently in

advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the intention to offer the statement and the particulars of it, including the name and address of the declarant.

Rule 5-804. Hearsay exceptions; declarant unavailable provides, in pertinent part:

(b) *Hearsay exceptions.*- The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

(3) Statement against interest.- A statement which was at the time of its making so contrary to the declarant's pecuniary or proprietary interest, so tended to subject the declarant to civil or criminal liability, or so tended to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless the person believed it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.